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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/759,788

01/16/2004

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YAMA-009

8159

24353 7590 02/19/2009  
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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

02/19/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/759,788	<b>Applicant(s)</b> YAMASHITA, THOMAS T.	
	<b>Examiner</b> NEIL LEVY	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10,11,13,14 and 16-40 is/are pending in the application.
- 4a) Of the above claim(s) 21-37 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-8,10,11,13,14,16,18-20,38 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1,3-8,10,11,13,14 and 16-40 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 21-37 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/23/06.

Claim 40 is to administration, thus a method requiring administration of the pesticide of Group III, non elected.

### ***Claim Rejections - 35 USC § 112***

Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Only phytotoxic pesticides are now in the composition, but claim 4 includes non-phytotoxics. Claims should be limited to those that are phytotoxic.

***Claim Rejections - 35 USC § 103***

Claim 3-8, 10, 11, 13, 14, 16, 18-20, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over HARMON 3558787 in view of KLOPPING AND BEATY 5634959-3789122

HARMON provides phytotoxic pesticides; fungicides, insecticides, nematocides in combination compositions (column 3 – 6) with nutrients and fertilizers. Pesticides are at 1-30% as dust, 10-50% aqueous (column 4). Included are sodium aluminofluoride (column 5, line 28), compositions are applied to plant (column 6, application).

Surfactants serve as the instant macronutrients and carbon skeleton energy source, ethoxylated alcohols, for example (column 7, lines 59-60, while macronutrients include free acids (column 7, lines 61, 62). Surfactants are at 2-3% (Example 1, 2.

Micronutrients are seen as the sodium lignosulfonate sodium-complexing agent (Example 1) at 4%.

No particular co-factor is readily evident KLOPPING also provides pesticidal compositions for plant application (column 1) as copper and zinc complexes with benzamides (column 17, 18), the copper and zinc serving as co-factors and micronutrients of the instant. Also present are energy sources, oils (column 26, line 11+) as carbon skeleton energy components, with detergents, and (example 29) with water-soluble macronutrients-cane sugar. BEATY is cited to show fertilizer and

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nutrients useful to apply to plants; Thus, the fertilizers of HARMON and KLOPPING would include these nutrient ingredients.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means to protect crop plants, to use any of art recognized means, as of the HARMON, modified as desired to increase stability, dispersibility, compatability of ingredients, processing ease, & reduced toxicity to the plants themselves.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization & enhanced plant growth effects.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation

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as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve improved control as is well known in the art.

The ingredients and amounts are known by the artisan to be used in amounts as are normally used in fertilizer and nutrient amendments. Absence of phytotoxicity would be a function of the concentrations of ingredients, and obvious to attain.

### ***Response to Arguments***

Applicant's arguments, filed 11/17/08, with respect to the rejection(s) of claim(s) 3-8, 10, 11, 13, 14, 16, 18-20, 38 and 39 under 35 USC 112, 102, & 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the amendments, under HARMON 3558787 in view of KLOPPING AND BEATY 5634959-3789122 and in consideration of new matter regarding all of the pesticides of claim 4.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/  
Primary Examiner, Art Unit 1615

2/17/09

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